

Appl. No. 10/015,959  
Response Dated November 1, 2004  
Reply to Office Action of July 1, 2004

### REMARKS

Claims 1-21 stand in this application. Claims 1, 2, 4, 5, 11-13, 15, 17, 18, and 20 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

At page 2 of the Office Action claims 1-3, 10-16, 18-19, and 21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent Number (USPN) 6,453,357 to Crow et al. ("Crow") with inherency from W. Richard Stevens, TCP/IP Illustrated Volume 1, The Protocols, 1994, Addison-Wesley, pages 148-151 ("Stevens"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102(e), the cited reference must teach every element of the claim. See MPEP § 2131, for example. Applicant submits that the Crow reference fails to teach each and every element recited in claims 1, 11, 13, 15, and 18, and thus they define over the Crow reference. For example, with respect to claim 1, as acknowledged in the Office Action at page 5, paragraph 2, the Crow reference fails to teach, among other things, the following language:

determining whether all packet fragments for said packet  
have been received using said offset values . . . .

Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 2, 3, and 10, which depend from claim 1 and,

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therefore, contain additional features that further distinguish these claims from the Crow reference.

Claims 11, 13, 15, and 18 recite features similar to those recited in claim 1. Therefore, for reasons analogous to those presented with respect to claim 1, Applicant respectfully submits that claims 11, 13, 15, and 18, and all claims directly or indirectly depending therefrom, are not anticipated and are patentable over the Crow reference. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claims 11-16, 18-19, and 21.

At page 5 claims 4-9, 17, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Crow reference in view of Stevens. Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

Applicant has amended claims 4, 17, and 20 and has incorporated their subject matter at least in part in amended independent claims 1, 15, and 18, respectively. Therefore, the obviousness rejection with respect to claims 4, 17, and 20 will be addressed below with respect to amended claims 1, 15, and 18.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching

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or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As stated above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1, 15, and 18. Therefore claims 1, 15, and 18, and all claims depending therefrom define over the Crow reference and the Stevens reference whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

determining whether all packet fragments for said packet  
have been received using said offset values . . . .

As correctly noted in the Office Action, the above-recited language is not disclosed by the Crow reference. According to the Office Action, the missing language is disclosed by the Stevens reference at page 150, lines 9-16. Applicant respectfully disagrees. The Stevens reference at the given cite, in relevant part, states that the first fragment of both datagrams contains 1480 bytes of data, where 8 bytes is for the UDP header and 1472 bytes is user data. The reference further states that the number following the "at" sign in the datagram, e.g., 1480, is the offset of the data in the fragment, from the start of the datagram. By way of contrast, claim 1 recites "determining whether all packet fragments for said packet have been received using said offset values."

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Applicant submits that the Stevens reference fails to disclose, teach or suggest the missing language. There is no teaching or suggestion by the Stevens reference that the offset number appearing after the "at" sign in the datagram is in any way used to determine whether all packet fragments for said packet have been received using the offset value. Rather, the Stevens reference discloses at page 150, lines 18-25, that a "plus" sign corresponding to the more fragments bit following the offset is used to indicate that there are more fragments comprising the datagram. The reference further states that the purpose of this bit is to let the receiver know when it has completed the reassembly of all fragments for a datagram. Thus, the "plus" sign is used to let the receiver know when the fragment reassembly is complete. There is no teaching or suggestion, however, that the "offset value" is used to determine "whether all packet fragments for said packet have been received," as recited in claim 1. Consequently, the Crow reference and the Stevens reference, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claims 4-9 is respectfully requested.

Claims 15 and 18 have been amended in a manner similar to claim 1. Therefore, for reasons analogous to those presented herein with respect to claim 1, Applicant submits that claim 15 and 18 also are non-obvious and patentable over the Crow reference and the Stevens reference, whether taken alone or in combination, because they fail to disclose, teach or suggest every element recited in claims 15 and 18. Applicant,

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therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Claims 17 depends from claim 15 and therefore the obviousness rejection with respect thereto also should be withdrawn. Claim 20 depends from claim 18 and therefore the obviousness rejection with respect thereto also should be withdrawn. Accordingly, Applicant submits that claims 17 and 20 are non-obvious and patentable over the cited references by virtue of their dependency from claims 15 and 18, respectively. *See* MPEP § 2143.03, for example.

For at least the above reasons, Applicant submits that pending claims 1-21 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

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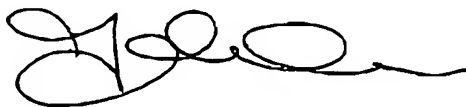
It is believed that claims 1- 21 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-3387 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP



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John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to:  
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Deborah Higham

11-1-04  
Date

Dated: November 1, 2004

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